IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 11823 of 2007(G)

PETITIONER:

T.MOHANAN, AGED 40,
S/O.THANKAPPAN CHETTIYAR, "BISMILLAH",
PATTATHANAM, KADAPPAKKADA P.O., KOLLAM.

BY ADV. SRI.R.RENJITH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE EXCISE COMMISSIONER,
OFFICE OF THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

3. THE ASST. EXCISE COMMISSIONER,
OFFICE OF THE ASST. EXCISE COMMISSIONER,
KOLLAM.

4. BOSE SOLOMON,BOSE BHAVAN,
VALIAVILA, THRIKKARUVA,
ASHTAMUDI P.O., KOLLAM DISTRICT.

BY ADV. SRI.C.C.THOMAS
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE PHOTOSTAT COPY OF THE COMMUNICATION DTD.26-3-07 ISSUED BY THE EXCISE INSPECTOR, KOLLAM
EXT.P2	TRUE PHOTOSTAT COPY OF THE CERTIFICATE DTD. 28-3-07 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE, KOLLAM
EXT.P3	TRUE PHOTOSTAT COPY OF THE CERTIFICATE DTD. 20-3-07 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE, KOLLAM
EXT.P4	TRUE PHOTOSTAT COPY OF THE CERTIFICATE DTD. 19-03-07 ISSUED BY THE WELFARE INSPECTOR, KOLLAM
EXT.P5	TRUE PHOTOSTAT COPY OF THE CERTIFICATE DTD. 19-3-07 ISSUED BY THE COMMERCIAL TAX OFFICER, KOLLAM
EXT.P6	TRUE PHOTOSTAT COPY OF THE CERTIFICATE DTD. 12-3-07 ISSUED BY THE WELFARE INSPECTOR, THIRUVANANTHAPURAM
EXT.P7	TRUE PHOTOSTAT COPY OF THE DEMAND DRAFT DTD. 20-03-07 TAKEN BY THE PETITIONER IN FAVOUR OF R3.
EXT.P8	TRUE PHOTOSTAT COPY OF THE REPRESENTATION DTD. 30-3-07 SUBMITTED BEFORE THE SECOND RESPONDENT.
EXT.P9	TRUE PHOTOSTAT COPY OF THE REPRESENTATION DTD. 30-03-07 SUBMITTED BEFORE THE THIRD RESPONDENT.
EXT.P10	TRUE PHOTOSTAT COPY OF THE ORDER DTD. 1-4-07 PASSED BY THE SECOND RESPONDENT.

/True Copy/

PS to Judge.

K. M. JOSEPH, J.

W.P.C. NO. 11823 OF 2007 G

Dated this the 11th September, 2007

JUDGMENT

Petitioner has approached this Court challenging Ext.P10. By Ext.P10, the second respondent Excise Commissioner has proceeded to confirm the sale of toddy shops for the year 2007 - 2008. Details of the Groups are mentioned therein. The case of the petitioner, in brief, is as follows:

Petitioner has been engaged in the sale of toddy for the last fifteen years. He has produced Ext.P2 which is the Preference Certificate, Ext.P3 which is the Certificate issued to show that there are no abkari arrears as far as the petitioner is concerned, Ext.P4 Certificate to show that there are no dues under the Toddy Welfare Board, Ext.P5 Sales Tax Clearance Certificate, Ext.P6 Certificate issued by the Welfare Fund Inspector and Ext.P7 Demand Draft taken out by the petitioner to show that the petitioner intended to participate in the auction held on 29.3.2007. According to petitioner, the petitioner went well in

time on 29.3.2007 where the auction was announced to be held. He would further plead that it was informed that the auction with respect to the toddy shop mentioned above will be held only in the afternoon. When he applied for a Pass, he was told that he will be given the Pass only at a later point of time. But, even though he requested for a Pass, he was surprised at a later point of time that all Passes were given and he will not be given any Pass. Right was settled in favour of the fourth respondent. Petitioner contends that there is wide-spread conspiracy and he was kept away. It is pleaded that most of the grantees are benamies of the Officials. He has contended that he has considerable experience in the field and he was present at the relevant time and he was arbitrarily excluded. It is further contended that the fourth respondent is not entitled to get preference.

2. Counter Affidavits have been filed by both the Government as well as the fourth respondent, denying the allegations. In support of his contention, counsel for petitioner

referred to the pleading in Ground D that most of the grantees are benamies. I do not think that such a pleading can be the basis for the contention that the fourth respondent is a benami of the Officials. Counsel for the fourth respondent would point out that the petitioner has not pleaded as to how the fourth respondent is not entitled to get the preference. The question ultimately to be decided is whether the petitioner was denied a Pass arbitrarily. The case of the respondent is that the petitioner was not present to remit money and take the Pass. This is essentially a question of fact. Going by the pleadings and the materials produced, in proceedings under Article 226 of the Constitution, I feel that it may not be open for me to arrive at a positive finding that the petitioner was indeed present and he was arbitrarily denied the Pass. If I am unable to render such a finding, the position would be that I must take it that the petitioner, even though he may be entitled to preference, did not actually participate in the auction by taking out the Pass as contemplated. If that be so, I do not think that the petitioner has

made out a case for interference with Ext.P10. Counsel for the fourth respondent referred to existence of a Vigilance Report. I make it clear that the rejection of the case of the petitioner will not stand in the way of the Government taking such appropriate action in accordance with law on a consideration of the Vigilance Report.

Subject to the above observation, the Writ Petition is dismissed.

K. M. JOSEPH, JUDGE

kbk.